



City of Santa Barbara
Police Department

Memorandum

DATE: January 27, 2011

TO: Fire and Police Commission

FROM: Holly Perea, Police Technician

SUBJECT: Abdelilah Rafik - Appeal of Denial of Taxi Driver Permit Renewal Application

On August 17, 2010, Abdelilah Rafik submitted a Renewal Application for a taxicab driver permit to the Santa Barbara Police Department. A review of the applicant's driving record revealed that Mr. Rafik was convicted of four moving violations in 2009:

On January 12, 2009, Mr. Rafik was convicted of an October 2008 violation of **22450(a) VC**, failure to stop at a stop sign. On March 9, 2009, Mr. Rafik was convicted of a January 2009 violation of **21802 VC**, failure to yield right of way at a stop sign. On March 26, 2009, Mr. Rafik was convicted of a November 2008 violation of **21651(a) VC**, illegally crossing the barrier or double line of divided highway. And on September 24, 2009, Mr. Rafik was convicted of a June 2009 violation of **21801(a) VC**, failure to yield to oncoming traffic when making a left turn or U-turn. (See Attachment 1 for applicable Vehicle Code sections.)

Based on this discovery, Mr. Rafik's renewal permit application was denied per **Santa Barbara Municipal Code (SBMC) §5.29.190 Denial** "A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable: **(I)** Has... three (3) or more moving violation convictions within one (1) year, or four (4) moving violation convictions within 2 years for renewal." It should be noted that the above section does not use the discretionary term "may not be issued," but instead states that a "permit shall not be issued," thereby requiring the Chief of Police to deny the permit under the above-listed circumstances.

Mr. Rafik was given written notice of this denial in person on November 30, 2010. On December 2, 2010, attorney Robert Goodman, on behalf of Abdelilah Rafik, filed a letter of appeal with the City Clerk's office per **SBMC §5.29.250 Appeal Procedure**. The appeal is based on the grounds that there are extenuating circumstances surrounding the traffic citations which will be revealed at the Fire and Police Commission hearing.

Per **SBMC §5.29.250(A)**:

3. Upon filing an appeal, the party to the action shall be entitled to a hearing by the Board of Fire and Police Commissioners at the next regular meeting.
4. The appellant or appellant's representative shall have the right to present his or her case in person.

5. The Board of Fire and Police Commissioners shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as adopted by the Commission.
6. If the Board of Fire and Police Commissioners refuses to issue, amend or restore a license or an owner's permit, the party to the action or such party's agent shall not file a new application within three hundred sixty five (365) days from the date of final action by the Board of Fire and Police Commissioners.
(See Attachment 3: SBMC Section 5.29.250.)

RECOMMENDATION:

That the Fire and Police Commission uphold the Police Department's decision to deny the renewal of Mr. Rafik's taxicab driver permit.

(ATTACHMENT 1)

V C Section 22450 Stop Requirements

Stop Requirements

22450. (a) The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway .

V C Section 21802 Stop Signs Intersections

Stop Signs: Intersections

21802. (a) The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop as required by Section 22450. The driver shall then yield the right-of-way to any vehicles which have approached from another highway, or which are approaching so closely as to constitute an immediate hazard, and shall continue to yield the right-of-way to those vehicles until he or she can proceed with reasonable safety.

(b) A driver having yielded as prescribed in subdivision (a) may proceed to enter the intersection, and the drivers of all other approaching vehicles shall yield the right-of-way to the vehicle entering or crossing the intersection.

(c) This section does not apply where stop signs are erected upon all approaches to an intersection.

V C Section 21651 Divided Highways

Divided Highways

21651. (a) Whenever a highway has been divided into two or more roadways by means of intermittent barriers or by means of a dividing section of not less than two feet in width, either unpaved or delineated by curbs, double-parallel lines, or other markings on the roadway, it is unlawful to do either of the following:

(1) To drive any vehicle over, upon, or across the dividing section.

(2) To make any left, semicircular, or U-turn with the vehicle on the divided highway, except through an opening in the barrier designated and intended by public authorities for the use of vehicles or through a plainly marked opening in the dividing section.

V C Section 21801 Left Turn or U Turn

Left-Turn or U-Turn

21801. (a) The driver of a vehicle intending to turn to the left or to complete a U-turn upon a highway, or to turn left into public or private property, or an alley, shall yield the right-of-way to all vehicles approaching from the opposite direction which are close enough to constitute a hazard at any time during the turning movement, and shall continue to yield the right-of-way to the approaching vehicles until the left turn or U-turn can be made with reasonable safety.

(ATTACHMENT 2)

5.29.190 Denial.

A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable:

- A. Has been a licensed driver for less than 6 months in the United States.
- B. Does not possess a valid Class C driver's license issued by the State of California.
- C. Is less than twenty-one (21) years of age, unless the applicant possesses a valid Class B driver's license issued by the State of California and is 18 years or older.
- D. Is currently required to register pursuant to Section 290 of the California Penal Code or is required to register in another state or country as a sex offender in a manner comparable to Penal Code Section 290.
- E. Has been convicted of a crime involving moral turpitude, narcotics or dangerous drugs, unless a period of not less than three (3) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later.
- F. Has been convicted for driving a vehicle recklessly within the two (2) years immediately preceding application for a permit or renewal.
- G. Has been convicted of operating a vehicle while under the influence of alcohol or drugs two (2) or more times within seven (7) years immediately preceding the application for a permit or a renewal application, or one (1) time within one (1) year immediately preceding application for a permit or renewal.
- H. Has a history of chronic alcohol-related criminal convictions, as evidenced by three (3) or more public intoxication convictions within two (2) years immediately preceding an application for or renewal of permit.
- I. Has two (2) or more moving violation convictions within one (1) year immediately preceding an application for a permit, or three (3) moving violation convictions within one (1) year, or four (4) moving violation convictions within two (2) years for renewal. "Moving violation" conviction shall mean those violations set forth in State Vehicle Code Section 12810.
- J. Has been convicted of a felony or misdemeanor hit and run.
- K. Has falsified or omitted material and relevant facts on the public vehicle driver's permit application.
- L. Has failed to comply with all applicable provisions of Section 5.29.175 of this Chapter. (Ord. 5360, 2005; Ord. 4974, 1996; Ord. 4277, 1984; Ord. 4206, 1983.)

(ATTACHMENT 3)

5.29.250 Appeal Procedure.

A. Appeals to the Board of Fire and Police Commissioners

1. Any decision of the Chief of Police denying a permit, or denying an amendment to a permit, or imposing a suspension or revocation of any owner's or driver's permit shall not become final until fifteen (15) days after the date of transmittal of the written notice to the person affected by such decision, during which period the party to the action may appeal the decision in the manner provided herein at any time prior to the expiration date of the fifteen (15) day period. If no appeal is taken before the expiration of the fifteen (15) day period, the decision of the Chief of Police shall be final.

2. The appeal of any decision shall be in writing signed by the party to the action briefly setting forth the reasons why such decision is not proper, stating an address at which the appellant will receive notices, and filed with the Clerk of the City.

3. Upon filing an appeal, the party to the action shall be entitled to a hearing by the Board of Fire and Police Commissioners at the next regular meeting.

4. The appellant or appellant's representative shall have the right to present his or her case in person.

5. The Board of Fire and Police Commissioners shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as adopted by the Commission.

6. If the Board of Fire and Police Commissioners refuses to issue, amend or restore a license or an owner's permit, the party to the action or such party's agent shall not file a new application within three hundred sixty five (365) days from the date of final action by the Board of Fire and Police Commissioners.

7. If the Board of Fire and Police Commissioners suspends an owner's permit or a license, the Chief of Police shall determine a period of suspension of not more than thirty (30) days, which is in accordance with the schedule of penalties developed by the Chief of Police.

8. If the Board of Fire and Police Commissioners' action is to grant or restore a certificate or a license, the Commission shall direct the Chief of Police to issue or restore the certificate or license.

B. Appeals to the City Council

1. Appeals to the City Council from the decision of the Board of Fire and Police Commissioners shall be made pursuant to the provisions of Section 1.30.050 of this Code. (Ord. 5360, 2005; Ord. 5136, 1999; Ord. 4206, 1983.)